

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

V.

JAMES ROBERT HALEY,

Defendant.

Case No. CR06-314RSL

ORDER DENYING DEFENDANT'S MOTION FOR LUMP-SUM RESTITUTION PAYMENT

1. INTRODUCTION

This matter comes before the Court on “Defendant’s Motion for Approval of Agreed Lump-Sum Restitution Payment and for Remission of Remaining Restitution Obligation to Key Bank” (Dkt. #19). Contending that defendant James Robert Haley and victim Key Bank have the right to reach a settlement for a \$35,000 cash payment to Key Bank in return for remission of a restitution obligation in the amount of \$336,837, defendant moves for an order approving Key Bank’s settlement offer. For the reasons set forth below, the Court denies defendant’s motion.

II. DISCUSSION

A. Mandatory Victim Restitution Act

Defendant points to policy objectives underlying the Mandatory Victim Restitution Act (“MVRA”) (18 U.S.C. §§ 3663A and 3664) to support his proposal for a lump-sum restitution payment to Key Bank. See Reply at 1-2. Defendant argues that an agreement between the

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1 defendant and victim for the victim to receive less than originally due is analogous to the
 2 MVRA's other procedural protections of victims. The MVRA enumerates several provisions to
 3 protect victims' interests, such as victims' rights to receive notice of the proceedings and to
 4 request amending the restitution order for an increased amount. See 18 U.S.C. §§ 3664(d)(2)(A)
 5 and 3664(d)(5). The MVRA also allows the defendant, victim, or government to notify the court
 6 of a change in the defendant's economic circumstances. See 18 U.S.C. § 3664(k). The MVRA
 7 does not, however, provide for the victim and defendant settling for decreased restitution after
 8 sentencing. Defendant correctly observes that victim welfare is a key purpose of the MVRA.
 9 This purpose coexists with others, such as deterrence, that likewise form fundamental bases
 10 underlying the MVRA provisions and criminal sentencing generally. Defendant's proposed
 11 settlement of paying Key Bank \$35,000 neither satisfies any of the specific provisions of the
 12 MVRA nor accords with the reasons underlying the original sentence's restitution amount of
 13 \$336,837.

14 **B. Restitution under United States v. Turner**

15 Both parties agree that United States v. Turner, 312 F.3d 1137 (9th Cir. 2002), serves as
 16 controlling law in this case. Defendant argues that Turner stands for the proposition that the
 17 victim has the right to contract around the restitution order to arrange for a smaller lump-sum
 18 payment (see Dkt. #19, "Memorandum of Law in Support of Defendant's Motion" at 3-4),
 19 whereas the government reads Turner as only allowing the victim the right to assign the victim's
 20 interest in restitution without effecting any decrease in the amount defendant must ultimately
 21 pay (see Dkt. #20 (Response) at 3).

22 Contrary to defendant's assertion (Reply at 3, footnote 2), the provision that the
 23 defendant must pay the full amount of restitution, regardless of assignment, is a holding in
 24 Turner and not mere dicta. Turner 312 F.3d at 1144 ("Turner is subject to the full amount of
 25 restitution."). The Turner court allowed the victim to assign the restitution obligation to another
 26 person in exchange for payment under 18 U.S.C. § 3663(b)(5), which provides that the victim

1 may consent to receive restitution in services in lieu of money or designate another person or
2 organization to receive the restitution. Id. The court specifically barred the rescinding of a
3 restitution order absent the conditions listed in 18 U.S.C. §§ 3664(k) (defendant's changed
4 economic circumstances), 3664(d)(5) (victim's petition to increase restitution), or 3163A and
5 3164 (defendant's default upon his restitution obligation). Id. at 1143. Thus Turner does not
6 stand for defendant's proposition that he be excused from paying full restitution due Key Bank
7 by Key Bank's proposal to accept a smaller lump-sum payment. It does, however, permit Key
8 Bank to enter into a sale and assignment agreement with a third party. Defendant also has the
9 option of presenting the Court with a motion for a reduction in the restitution obligations for
10 inability to pay.

III. CONCLUSION

12 For the foregoing reasons, the Court DENIES defendant's "Motion for Approval of
13 Agreed Lump-Sum Restitution Payment and for Remission of Remaining Restitution Obligation
14 to Key Bank" (Dkt. #19).

DATED this 4th day of March, 2008.

Robert S. Lasnik
Robert S. Lasnik
United States District Judge